Introduced by Assembly Member Gatto

February 8, 2012

An act to amend Sections 110460, 111940, 111955, 113789, 114021, and 114023 of, and to add Article 5 (commencing with Section 113400) to Chapter 11 of Part 6 of Division 104 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, as introduced, Gatto. Food safety: cottage food operations. Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law also prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. A violation of these provisions is a misdemeanor.

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This bill would exempt a cottage food operation, as defined, from specified food processing establishment, Sherman Law, and California Retail Food Code requirements. This bill would require a cottage food operation to meet specified requirements relating to sanitation, packaging, and labeling. This bill would authorize the State Public Health Officer to adopt implementing regulations, as specified, and procedures for a registration system. This bill would also authorize the State Public Health Officer to access the registered area of a private home where a cottage food operation is located, as specified. This bill would prescribe civil penalties for a violation of its provisions, and would provide for local permitting of cottage food operations.

By imposing duties on local officials, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the 2 following:
- (a) Small businesses have played an important role in helping
 slow economies recover and prosper as an engine of job creation.
 During the 1990s, small businesses created the majority of new
 - jobs and now account for 65 percent of United States employment.
 - (b) California, and the United States as a whole, are facing growing obesity and obesity-related disease epidemics.
- 9 (1) Two-thirds of American adults and nearly one-third of 10 children and teens are obese or overweight, placing them at risk 11 for developing chronic diseases such as diabetes, heart disease, 12 and cancer.
- 13 (2) One in every nine California children, one in three teens, 14 and over half of adults are already overweight or obese. This 15 epidemic affects virtually all Californians.

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(3) These health conditions are preventable and curable through lifestyle choices that include consumption of healthy fresh foods.

- (c) For decades, low-income and rural communities have faced limited opportunities to purchase healthy foods. Often, without cars or convenient public transportation options, low-income residents in these areas must rely for much of their shopping on expensive, fatty, processed foods sold at convenience and corner stores.
- (d) There is a growing movement in California to support community-based food production, sometimes referred to as "cottage food," "artisanal food," "slow food," "locally based food," or "urban agriculture" movements. These movements seek to connect food to local communities, small businesses, and environmental sustainability.
- (e) Increased opportunities for entrepreneur development through microenterprises can help to supplement household incomes, prevent poverty and hunger, and strengthen local economies.
- (f) At least 25 other states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare, for sale, foods that are not potentially hazardous.
 - (g) Even some bake sales are currently illegal in California.
- (h) It is the intent of the Legislature to enact a homemade food act specifically designed to help address these challenges and opportunities.
- SEC. 2. Section 110460 of the Health and Safety Code is amended to read:
- 110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food operation, as defined in Section 113400.
- SEC. 3. Section 111940 of the Health and Safety Code is amended to read:
- 111940. (a) If any person violates any provision of Chapter 4 (commencing with Section 111950), Chapter 5 (commencing with Section 112150), Chapter 6 (commencing with Section 112350),

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1 Chapter 7 (commencing with Section 112500), Chapter 8 2 (commencing with Section 112650), Chapter 10 (commencing 3 with Section 113025), or Article 3 (commencing with Section 4 113250) of Chapter 11, or Article 5 (commencing with Section 5 113400) of Chapter 11, of this part, or Chapter 4 (commencing 6 with Section 108100) of Part 3, or any regulation adopted pursuant 7 to these provisions, the department may assess a civil penalty 8 against that person as provided by this section.

- (b) The penalty may be in an amount not to exceed one thousand dollars (\$1,000) per day. Each day that a violation continues shall be considered a separate violation.
- (c) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a complaint to the person charged with the violation. The complaint shall allege the acts or failures to act that constitute the basis for the violation and the amount of the penalty. The complaint shall be served by personal service or by certified mail and shall inform the person so served of the right to a hearing.
- (d) Any person served with a complaint pursuant to subdivision (c) of this section may, within 20 days after service of the complaint, request a hearing by filing with the department a notice of defense. A notice of defense is deemed to have been filed within the 20-day period if it is postmarked within the 20-day period. If a hearing is requested by the person, it shall be conducted within 90 days after the receipt by the department of the notice of defense. If no notice of defense is filed within 20 days after service of the complaint, the department shall issue an order setting the penalty as proposed in the complaint unless the department and the person have entered into a settlement agreement, in which case the department shall issue an order setting the penalty in the amount specified in the settlement agreement. When the person has not filed a notice of defense or where the department and the person have entered into a settlement agreement, the order shall not be subject to review by any court or agency.
- (e) Any hearing required under this section shall be conducted pursuant to the procedures specified in Section 100171, except to the extent they are inconsistent with the specific requirements of this section.

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(f) Orders setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

- (g) Within 30 days after service of a copy of a decision issued by the director after a hearing, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of the decision or order of the director in any judicial proceeding brought to enforce the decision or order or for other remedies. Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the director if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to the Miscellaneous Food, Food Facility, and Hazardous Substances Act, as defined in subdivision (b) of Section 27, or the accrual of any penalties assessed pursuant to this section. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.
- (h) The remedies under this section are in addition to, and do not supersede, or limit, any and all other remedies, civil or criminal.
- SEC. 4. Section 111955 of the Health and Safety Code is amended to read:
- 111955. "Food processing establishment," as used in this chapter, shall mean any room, building or place or portion thereof, maintained, used or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering or otherwise preparing or handling food except restaurants. "Food processing establishment" shall not include a cottage food operation, as defined in Section 113400.
- SEC. 5. Article 5 (commencing with Section 113400) is added to Chapter 11 of Part 6 of Division 104 of the Health and Safety Code, to read:

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Article 5. Cottage Food Operations

 113400. This article shall be known, and may be cited, as the California Homemade Food Act.

113401. Unless the context otherwise requires, the meaning of terms used in this article, as applicable, shall be the same as the definitions found under the California Retail Food Code (Part 7 (commencing with Section 113700)). Additionally, for the purposes of this article, the following definitions apply:

- (a) "Adulterated" means either of the following:
- (1) Food that bears or contains any poisonous or deleterious substance that may render the food impure or injurious to health.
- (2) Food that is manufactured, prepared, or stored in a manner that deviates from a HACCP plan, as defined in Section 113801, so as to pose a discernable increase in risk.
- (b) "Cottage food operation" means a private home where cottage food products are prepared or packaged to be sold directly to consumers, including through the internet or mail order, and to in-state retail food facilities pursuant to this article.
- (c) "Cottage food products" means foods that are prepared for sale in the home kitchen of a person's primary private home and are not potentially hazardous food, as defined in Section 113871. Cottage food products include, but are not limited to, nonpotentially hazardous baked goods, jams, jellies, fruit butters, preserves, pickles with a pH level of 4.6 or below when measured at 75 degrees Fahrenheit, candy, granola, dry cereals, popcorns, nut mixes, dried fruit, chocolate covered nonperishable nuts and dried fruit, dry baking mixes, roasted coffees, dry teas, honey, and similar products specified in rules adopted by the department.
- (d) "Home kitchen" means a kitchen primarily intended for use by residents of a private home. It may contain one or more stoves or ovens, including a double oven, and shall be designed for residential use.
- (e) "Registered area" means the portion of a private home that contains a home kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.
- (f) "Potentially hazardous food" has the meaning provided in Section 113871.
- 39 (g) "Private home" means a dwelling, or an area within a rental 40 unit, where individuals reside.

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113402. A cottage food operation is subject to the following requirements:

- (a) Preparation, packaging, or handling of cottage food products shall not occur in the home kitchen simultaneously with any other domestic activities. Prohibited activities may include, but are not limited to:
 - (1) Family meal preparation.

- (2) Dishwashing unrelated to cottage food production.
 - (3) Clothes washing or ironing.
 - (4) Kitchen cleaning unrelated to cottage food production.
- (b) Infants, small children, or pets shall not be allowed in the home kitchen during the preparation, packaging, or handling of any cottage food products.
- (c) All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products shall be washed, rinsed, and sanitized before each use.
- (d) All food preparation and food equipment storage areas shall be maintained free of rodents and insects.
- (e) A person involved in the preparation and packaging of cottage food products shall comply with all of the following:
- (1) The person may not work in the home kitchen when sick with a contagious illness.
- (2) The person shall wash his or her hands before any food preparation and food packaging activity.
- 113403. A cottage food operation shall package and label any food it produces or packages for sale in compliance with labeling requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343-1 et seq.).
- 113404. (a) The director may adopt regulations reasonably necessary to implement this article. The regulations may include, but are not limited to, all of the following:
- (1) Sanitary procedures, in addition to those required by this article.
- (2) Labeling requirements, which shall be in compliance with applicable regulations adopted pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343-1 et seq.).
- (3) Procedures for a registration system, including provisions for reasonable fees so that individuals may obtain a registration to operate a cottage food operation. The director, however, shall not require an inspection prior to allowing a food operation to register.

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(4) If a registration system and provisions for reasonable fees are established, these fees shall not exceed the reasonable regulatory costs of administering the registration program.

- (b) The director may not set a maximum annual gross sales amount for a cottage food operation.
- 113405. (a) For purposes of determining compliance with this article, the director may access, for inspection purposes, the registered area of a private home where a cottage food operation is located only if the director has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced in the home kitchen. The director shall not conduct routine inspections of cottage food operations.
- (b) All inspections shall be made at reasonable times and, when possible, during regular business hours.
- (c) If the director is denied access to the registered area where access was sought for the purpose of enforcing this article, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the registered area, and a court may issue a search warrant for the purpose requested.
- (d) Access under this section is limited to the registered area and solely for the purpose of enforcing or administering this article.
- 113406. All of the following shall apply to cottage food operations:
- (a) A city, county, or city and county shall not prohibit cottage food operations in any residential dwellings, but shall do one of the following:
- (1) Classify these operations as a permitted use of residential property for zoning purposes.
- (2) Grant a nondiscretionary permit to use a residence as any cottage food operation that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to those homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, or if there is no zoning administrator, by the person or persons designated by the planning agency to grant these permits, upon the certification without a hearing.

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(3) Require any cottage food operation to apply for a permit to use a residence for its operation. The zoning administrator, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits, shall review and decide the applications. The use permit shall be granted if the cottage food operation complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration, traffic control, parking, and noise control relating to those homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan. The local government shall process any required permit as economically as possible. Fees charged for review shall not exceed the costs of the review and permit process. An applicant may request a verification of fees, and the city, county, or city and county shall provide the applicant with a written breakdown within 45 days of the request. The application form for cottage food operation permits shall include a statement of the applicant's right to request the written fee verification.

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- (b) In connection with any action taken pursuant to paragraph (2) or (3) of subdivision (a), a city, county, or city and county shall do all of the following:
- (1) Upon the request of an applicant, provide a list of the permits and fees that are required by the city, county, or city and county, including information about other permits that may be required by other departments in the city, county, or city and county, or by other public agencies. The city, county, or city and county shall, upon request of any applicant, also provide information about the anticipated length of time for reviewing and processing the permit application.
- (2) Upon the request of an applicant, provide information on the breakdown of any individual fees charged in connection with the issuance of the permit.
- (3) If a deposit is required to cover the cost of the permit, provide information to the applicant about the estimated final cost to the applicant of the permit, and procedures for receiving a refund from the portion of the deposit not used.
- (c) Use of a residence for the purposes of a cottage food operation shall not constitute a change of occupancy for purposes of the State Housing Law (Part 1.5 (commencing with Section

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1 17910) of Division 13), or for purposes of local building and fire codes.

- (d) Cottage food operations shall be considered residences for the purposes of the State Uniform Building Standards Code and local building and fire codes.
- SEC. 6. Section 113789 of the Health and Safety Code is amended to read:
- 113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:
- (1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.
- (2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.
- (b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:
 - (1) Public and private school cafeterias.
- 20 (2) Restricted food service facilities.
- 21 (3) Licensed health care facilities.
- 22 (4) Commissaries.
- 23 (5) Mobile food facilities.
- 24 (6) Mobile support units.
- 25 (7) Temporary food facilities.
- 26 (8) Vending machines.
- 27 (9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.
- 29 (10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.
 - (c) "Food facility" does not include any of the following:
 - (1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.
- 34 (2) A private home, including a cottage food operation, as 35 defined in Section 113400.
 - (3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

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(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

- (5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.
- (6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.
- (7) A commercial food processing plant as defined in Section 111955.
 - (8) A child day care facility, as defined in Section 1596.750.
 - (9) A community care facility, as defined in Section 1502.
- (10) A residential care facility for the elderly, as defined in Section 1569.2.
- (11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.
- (12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.
- SEC. 7. Section 114021 of the Health and Safety Code is amended to read:
- 114021. (a) Food shall be obtained from sources that comply with all applicable laws.
- (b) Food stored or prepared in a private home shall not be used or offered for sale in a food facility, *unless that food is prepared*

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by a cottage food operation that meets the requirements of Article
 5 (commencing with Section 113400) of Chapter 11 of Part 6.
 SEC. 8. Section 114023 of the Health and Safety Code is

SEC. 8. Section 114023 of the Health and Safety Code is amended to read:

114023. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant, or from a cottage food operation that meets the requirements of Article 5 (commencing with Section 113400) of Chapter 11 of Part 6.

SEC. 9. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.